IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Virendra and ors.

Vs.
State

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S.B. CRIMINAL REVISION PETITION NO.948/2006

under Section 397 read with Section 401 Cr.P.C.

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Date of Order:- August 25, 2006.

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. A.K. Gupta for the accused-petitioners.
Mr. B.N. Sandhu P.P. for the State.

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BY THE COURT:-

This revision petition under Section 397 read with Section 401 Cr.P.C. is directed against the order dated 8/8/2006 passed by the learned Additional District and Sessions Judge (Fast Track) Kishangarh Bas, District Alwar allowing the application u/S.319 Cr.P.C. for arraigning the petitioners as additional accused in Sessions Case No.5/2006 for offences under Sections 147, 148, 447, 341, 302/149, 307/149 and 323/149 IPC.

2) The relevant facts giving rise to this petition are that Bachchu Singh lodged an F.I.R. on

7/8/2005 at 4.30 P.M. at P.S. Khairthal with the allegation that at about 11.30 a.m. on that day seven persons including the present petitioners named in the F.I.R. came and assaulted Kailash, Jeetram and Mewa as a result of which, Kailash died and Jeetram and Mewa sustained injuries. Inured Kailash succumbed to the injuries. After investigation the police filed charge sheet against only four accused persons. The case was committed for trial.

3) During the course of trial after recording of the statements of Bachchu Singh PW1, Ramchandra PW2, Mewa PW3 and Jeetram PW4, an application under Section 319 Cr.P.C. came to be filed by the complainant through the learned Additional Public Prosecutor. After hearing learned counsel for the parties the said application was allowed vide impugned order and the present petitioners were arrayed as additional accused. Hence, this revision petition.

4) Their learned counsel has inter-alia contended that the learned court below has committed grave illegality in not keeping in view the settled legal position with regard to arraigning the additional accused persons. According to him, the allegation against petitioner Virendra is that he gave a spade blow on the head of Mewa but no corresponding injury has been found on his head. The injury detected

on his head is a lacerated wound which is caused by blunt object whereas the spade is a sharp edged weapon. The witnesses have also not deposed that the blow was struck from the rear or blunt side of the spade. He has further submitted that there is absolutely no specific allegation against petitioners No.2 and 3 Smt.Kaishalya and Mst.Ramesh though they are alleged to be present on the scene of occurrence. Learned Public Prosecutor also could not controvert these contentions but he has tried to support the impugned-order.

5) I have considered the respective submissions made at the bar and have perused the impugned-order as well as the statements of the witnesses recorded during trial.

6) A plain reading of the statements of the witnesses makes it abundantly clear that there is ample force and substance in the contention raised by the learned counsel for the petitioners. Indeed, petitioner Virendra is alleged to have given a blow on the head of Mewa with a spade but no corresponding injury has been detected on his head. The injury detected on his head is a lacerated wound which is caused by blunt object whereas the spade is admittedly a sharp edged weapon. The witnesses have also not stated in their statements that the blow was struck

from the rear or blunt side of the spade. No specific allegation is there against petitioners Smt.Kaushalya and Mst.Ramesh though they are shown to be present on the scene of occurrence.

7) It has been held in **Michael Machado and anr. Vs. Central Bureau of Investigation & anr.- 2000 Cr.L.J. 1706 (SC)** that extraordinary power under Section 319 Cr.P.C. is discretionary and it should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. It has been further held that judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court has also to bear in mind while examining an application under Section 319 Cr.P.C. that there is no compelling duty of the court to proceed against other persons. If there is primafacie case and there is reasonable prospect of conviction of the persons being arraigned as additional accused for the alleged offences, the court may arraign and summon such persons as additional accused to face the trial along with accused already facing trial if the trial is still pending and in case

trial has already concluded, such persons may be tried separately as has been held in the case of **Shashikant Singh Vs. Tarkeshwar Singh & anr. : (2002)5 SCC 738.**

8) It is true as held in **Smt. Rukhsana Khatoon Vs. Sakhawat Hussain & Ors.- AIR 2002 SC 2342** that the persons named in the FIR as accused, but not charge-sheeted can be summoned and arraigned as additional accused under Section 319 Cr.P.C. particularly when the evidence of the prosecution witnesses corroborates the role of these persons in the alleged incident. But, in the instant case, as is evident from the statements of the witnesses namely; Bachchu Singh, PW-1, Ram Chandra PW-2, Mewa PW-3 and Jeetram PW-4 though the presence of these accused persons is prima-facie established on the scene of occurrence but no specific allegation is against petitioners Smt.Kaushalya and Mst.Ramesh and the allegation against petitioner Virendra is on the face of it untenable in view of the medical evidence on record. This apart, the allegation of blow on the head is attributed to another accused also.

9) Thus, from the evidence on record, it cannot be said that there is reasonable prospect of the present petitioner being convicted at the trial for the alleged offences. The court below was, therefore, under no compelling duty to proceed against the

petitioners and, therefore, the order passed against the petitioners arraigning them as additional accused is unsustainable and in view of the settled law in this behalf as well as the materials on record and deserves to be quashed.

Accordingly, this petition u/S.397 r/w. S.401 Cr.P.C. is allowed and the impugned-order dated 8/8/2006 passed by the learned Additional District & Sessions Judge (Fast track) Kishangarh Bas, District Alwar allowing the application under Section 319 Cr.P.C. and arraigning the petitioners as additional accused in Sessions Case No.5/2006 is hereby quashed and set-aside.

(HARBANS LAL), J.

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